

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID DALE McCUE,)	
)	Civil Action No. 2:19-cv-00934
Plaintiff,)	
)	Judge Robert J. Colville
vs.)	
)	Magistrate Judge Lisa Pupo Lenihan
TOWNSHIP OF HANOVER,)	
HANOVER TOWNSHIP POLICE)	
DEPARTMENT, MICHAEL)	
DHANSE, STAN HENRY,)	
JOCELYN RUSE, and TINA BLACK,)	
)	
Defendants.)	

ORDER OF COURT

Before the Court is the April 18, 2022 Report and Recommendation (ECF No. 124) issued by the Honorable Lisa Pupo Lenihan. Judge Lenihan's Report and Recommendation recommends that the Motion for Summary Judgment (ECF No. 107) filed by Defendants Michael Dhanse, Hanover Township Police Department, Stan Henry, and Township of Hanover ("Moving Defendants") be denied, and that the Motion be denied without prejudice with respect to the issue of qualified immunity. Report and Recommendation 1, ECF No. 124. On May 2, 2022, Moving Defendants filed timely Objections (ECF No. 125), along with a Brief in Support (ECF No. 126) of their Objections, to Judge Lenihan's Report and Recommendation. Plaintiff David Dale McCue filed a Brief in Opposition (ECF No. 127) to Moving Defendants' Objections on May 5, 2022. This matter is ripe for disposition.

"The Federal Magistrates Act provides two separate standards of judicial review of orders on matters referred to magistrate judges." *Alarmax Distributors, Inc. v. Honeywell Int'l Inc.*, No. 2:14-cv-1527, 2015 WL 12756857, at *1 (W.D. Pa. Nov. 24, 2015) (citing 28 U.S.C. § 636(b)(1)). A district court reviews objections to a magistrate judge's decision on non-dispositive matters to

determine whether any part of the order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). A district court may only modify or set aside those parts of the order on non-dispositive matters that it finds to be clearly erroneous or contrary to law. *Id.* “A finding is ‘clearly erroneous’ when, ‘although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Pennsylvania, Dep’t of Envtl. Prot. v. Allegheny Energy, Inc.*, No. 2:05-cv-885, 2007 WL 2253554, at *1 (W.D. Pa. Aug. 3, 2007) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985)). “A magistrate judge’s order is contrary to law ‘when the magistrate judge has misinterpreted or misapplied the applicable law.’” *Brandon v. Burkhart*, No. 1:16-cv-177, 2020 WL 85494, at *2 (W.D. Pa. Jan. 7, 2020) (quoting *Doe v. Hartford Life & Accident Ins. Co.*, 237 F.R.D. 545, 548 (D.N.J. 2006)).

Objections to a magistrate judge’s disposition of a dispositive matter are subject to de novo review before the district judge. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). The reviewing district court must make a de novo determination of those portions of the magistrate judge’s report and recommendation to which objections are made. *Id.* Following de novo review, “[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, “even absent objections to the report and recommendation, a district court should ‘afford some level of review to dispositive legal issues raised by the report,’” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

The matter at issue involves the disposition of a dispositive matter, and this Court must thus make a de novo determination of those portions of Judge Lenihan's Report and Recommendation to which the Moving Defendants' object. Following review of Judge Lenihan's April 18, 2022 Report and Recommendation, Moving Defendants' Objections, Plaintiff's Brief in Opposition to the Objections, as well as a review of the entire summary judgment record in this matter, it is hereby ORDERED as follows:

Moving Defendants' Objections to the Report and Recommendation are overruled, and the Court approves and adopts the Report and Recommendation in its entirety as the Opinion of the Court with respect to the pending Motion for Summary Judgment. The Court agrees entirely with the thorough and well-reasoned analysis set forth in the Report and Recommendation, and further finds that Moving Defendants' Objections fail to set forth any basis to reject or modify the recommended disposition. In particular, the Court notes that Moving Defendants' Objections appear to reflect a misunderstanding of the burden that the moving party bears at the summary judgment stage, and further fail to take into consideration that a court must view the record in a light most favorable to the nonmoving party and must draw all reasonable inferences in the nonmoving party's favor at this stage. Again, the Court finds Judge Lenihan's Report and Recommendation to be thorough and well-reasoned, and the Court agrees with the conclusions and analysis set forth therein. Moving Defendants' Motion for Summary Judgment is denied. The Motion is denied without prejudice with respect to the issue of qualified immunity, consistent with the analysis and discussion set forth in the Report and Recommendation.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: August 22, 2022
cc/ecf: All counsel of record